

U.S. Department of Labor

Office of Administrative Law Judges
O'Neill Federal Building - Room 411
10 Causeway Street
Boston, MA 02109

(617) 223-9355
(617) 223-4254 (FAX)



Issue Date: 04 May 2006

CASE NO.: 2003-AIR-00011

In the Matter of

CLIFFORD J. WILLIAMS
Complainant

v.

UNITED AIRLINES
Respondent

Appearances:

Paul T. Prew (DiMento & Sullivan),
Boston, Massachusetts, for the Complainant

Gary S. Kaplan (Seyfarth & Shaw),
Chicago, Illinois, for the Respondent

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER DISMISSING COMPLAINT

The above matter involves a complaint filed by Clifford J. Williams (Williams) on November 15, 2002, alleging that United Airlines (United) violated the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (the Act), 49 U.S.C. § 42121 by terminating his employment on June 14, 2000 in retaliation for his protected whistleblowing activities in reporting United's safety violations to the Federal Aviation Administration. The Occupational Safety and Health Administration reviewed Williams' complaint but declined to investigate based on its finding that the complaint was not filed within the Act's 90-day limitation period. Williams then requested a formal administrative hearing pursuant to section 42121(b)(2)(A) of the Act and the implementing regulations at 29 C.F.R. §§ 1979.106, 1979.107. While the complaint was pending, United filed for bankruptcy protection, and by order issued on June 3, 2003, this administrative law judge stayed further administrative proceedings on the complaint pursuant to the rulings of the Administrative Review Board (ARB) in *Davis v. United Airlines, Inc.*, ARB Case Nos. 02-105, 02-088, 03-037, 02-054, ALJ Case Nos. 01-AIR-5, 02-AIR-5, 02-AIR-6, 2001-AIR-002 (May 30, 2003) (*Davis*) that cases under the Act in which an employee complainant is the sole prosecuting party are subject to the

automatic stay provisions of the Bankruptcy Code (11 U.S.C. § 362(a)(1)) and that the governmental unit police and regulatory powers enforcement exemption (11 U.S.C. § 362(b)(4)) is not applicable.

On January 20, 2006, the Bankruptcy Court for the Northern District of Illinois, Eastern Division entered an order confirming United's Second Amended Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code. Thereafter, on April 4, 2006, United's attorney filed a Notice of Discharge in the instant matter and moved for entry of an order of dismissal. Williams has not responded.

On April 26, 2006, the ARB issued a final decision and order of dismissal in *Davis* based on its finding that the Bankruptcy Court's entry of the Confirmation Order discharged and released United from the *Davis* petitioners' whistleblower discrimination claims under the Act. *Davis v. United Airlines, Inc.*, ARB Case Nos. 02-105, 02-088, 03-037, 02-054, ALJ Case Nos. 01-AIR-5, 02-AIR-5, 02-AIR-6, 2001-AIR-002 (Apr. 26, 2006). In making this finding, the ARB noted that section 1141(d)(1) of the Bankruptcy Code defines the effect of confirmation of a Chapter 11 reorganization plan as follows:

Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation . . . whether or not—

- (i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;
- (ii) such claim is allowed under section 502 of this title; or
- (iii) the holder of such claim has accepted the plan;

11 U.S.C. 1141(d)(1). The ARB further noted that section 524(a) of the Code provides that a discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover, or offset any debt” that is discharged under the plan. 11 U.S.C. § 524(a). Lastly, the ARB noted that the Confirmation Order provides,

[e]xcept as otherwise specifically provided in the Plan . . . all Entities who have held, hold, or may hold Claims against or Interests in the Debtors or against the Released Parties and Exculpated Parties are permanently rejoined, from and after the Effective Date, from: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claim against or Interest in the Reorganized Debtors, the Exculpated Parties, the Released Parties

In re UAL Corp., Case No. 02-B-48191, Confirmation Order para. 4(e) (Bankr. N.D.Ill. Jan. 20, 2006).

Williams has not responded to United's Notice of Discharge and Motion for dismissal. As I find that the ARB's decision in *Davis* is controlling, I will lift the stay of this proceeding and allow United's Motion for entry of an order of dismissal.

Accordingly, the complaint filed by Clifford J. Williams in the above matter is **DISMISSED** with prejudice

SO ORDERED.

A

DANIEL F. SUTTON
ADMINISTRATIVE LAW JUDGE

Boston, Massachusetts

NOTICE OF APPEAL RIGHTS

To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the administrative law judge’s decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1979.110(a).

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).